court to hear the owner of the vehicle sold under a hire-purchase agreement before making an order of forfeiture. Ali J. expressed his dissent firstly, on the ground, that there is no express provision in section 92(4) of the Road Traffic Ordinance to hold any enquiry, and second, on the ground, that the court is not empowered to look beyond the registered owner of the vehicle in view of the definition of an 'owner' in section 2 of the Ordinance as the registered owner. We have already dealt with the question of the court's power to hold an inquiry. As for the second point, Raja Azlan Shah J. in *Sing Hoe Motor Co. Ltd.* v. *Public Prosecutor* [12] observed "to adopt the narrow approach as applied by Ali J. in *Public Prosecutor* v. *Ong Keng Seong, ante,* in not enquiring beyond the bare fact of registration is unrealistic to be acceptable and tends to work injustice on an innocent party". With respect, we agree with these observations. Section 138(1) of the Road Traffic Ordinance reads: "For the purpose of any prosecution or proceeding under this Ordinance the registered owner of a motor vehicle shall be deemed to be the owner of that motor vehicle". The section speaks for itself. An inquiry for the purpose of releasing a vehicle to the true owner is not, in our opinion, a prosecution or a proceeding under the Ordinance. Besides, in our view, proceedings to determine the true owner is to be conducted not under the Ordinance but under section 407(ii) of the Criminal Procedure Code. That section empowers the court to order the delivery of the property seized to 'any person' and we must presume that the expression 'any person' is wide enough to embrace the true legal owner of a vehicle having regard to the dictum of the Privy Council in *Sajan Singh* v. *Sadara Ali* [13] on the question of registration of a motor vehicle as evidence of ownership that: "The registration book is not in Malaya, any more than it is in England, a document of title".

Questions answered.

Solicitors: *Wilson & Co.*

SINGAPORE HOTEL v. AIRPORT HIRE CARS

[O.C.J. (Winslow J.) September 3, 1968]
[Singapore — Civil Suit No. 458 of 1967]

Landlord and Tenant — Rent controlled premises — Recovery of — Tender of cheque postdated to after date of service of notice to quit no tender in law — Exposure to penalty, fine or forfeiture — Control of Rent Ordinance (Cap. 242), ss. 15(1)(a)(b)(h).

The plaintiffs, landlords of a rent-controlled premises, brought an action for the recovery of possession of the premises on the grounds that the defendants: (1) were in arrear in rent for more than 21 days at the date of the notice to quit; (2) knowingly committed a breach of the Local Government Integration Ordinance, 1963, and exposed the plaintiffs to a penalty, fine or forfeiture; (3) were in breach of the condition of the tenancy prohibiting the use of the premises as an office.

The defendants denied all the allegations and further contended that before January 30, 1967, the date of service of the notice to quit, all rent due had been tendered by way of a postdated cheque dated January 31, 1967, which the plaintiffs refused to accept.

Held: (1) the tender of the postdated cheque dated January 31, 1967, did not amount to a tender in law at or before January 30, 1967, the date of the service of the notice to quit;

(2) before a landlord can be said to be exposed to any penalty, fine or forfeiture, it must be shown that there was exposure to conviction, and there is no exposure to conviction unless facts exist which would support a conviction;

(3) the defendants did not commit any breach of a condition of the tenancy prohibiting the use of the premises as an office as no such condition had been imposed on the tenancy;

(4) the plaintiffs had succeeded in proving their case under section 15(1)(a) of the Control of Rent Ordinance (Cap. 242). As it was unreasonable to make an outright order for possession, the order was made subject to the condition that it be suspended for as long as the defendants pay the monthly rent regularly within 7 days of the end of every month and all arrears of rent are paid within 14 days of the date of the judgment.

Cases referred to:—

(1) *Farquharson* v. *Pearl Assurance Co. Ltd.* [1937] 3 All E.R. 124.

(2) *Hooi Chuk Kwong* v. *Lim Saw Choo* [1958] M.L.J. 5.

(3) *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corpn. Ltd.* [1967] 2 M.L.J. 70.

CIVIL SUIT.

Lo Kok Siong for the plaintiffs.

T. L. Lee for the defendants.

Cur. Adv. Vult.

Winslow J.: The plaintiffs' claim is against the defendants for recovery of possession of a garage at the rear of No. 2 Tanjong Katong Road let to them at a monthly rent of $220 payable in advance.

It is also claimed that such tenancy was duly determined by a notice in writing to quit expiring on the 28th February, 1967 which was served on the defendants on the 30th January, 1967 and that the plaintiffs are not precluded from claiming recovery of possession on the following grounds:—

"(a) that at the date of the notice determining the tenancy rent lawfully due was in arrear for upwards of 21 days after the notice of demand in writing has been served on the defendants and there was no tender thereof at or before such date; and

(b) that the defendants knowingly have committed a breach of the provisions of the Local Government Integration Ordinance, 1963 and/or the rules or bylaws made thereunder affecting the premises which expose the plaintiffs to a penalty fine or forfeiture.

(c) that the defendants without the approval of the plaintiffs have converted into and/or used the said premises as office premises and/or a dwelling house and

have thereby committed a breach of a condition of the tenancy. The plaintiffs will adduce evidence at the trial to show that the said premises had been let to the defendants by the plaintiffs for the sole purpose of parking the defendants' taxis therein."

They also claim *mesne* profits from 1st March, 1967 to date of judgment at $220 per month.

The defendants admit the tenancy but deny that the premises were let out to them as a garage. They claim that they were let to them for use as office premises.

The defendants also deny that the tenancy was duly determined. They claim that all rent due had been tendered as on the date of the service of the notice to quit but refused.

The defendants also claim greater hardship to them if an order for possession were to be made and deny any breach of any condition of the tenancy by their use of the premises as an office etc.

On the evidence adduced on both sides I make the following findings of fact:—

(a) The tenancy arrangements were concluded orally between the managing partner of the plaintiffs, one Wong Ser Chin (P.W.1) and the sole proprietor, Yeo Chin Choo (D.W.1) of the defendant firm sometime in 1956 although the former changed the year in the course of his evidence to 1959 or thereabouts and later said that he could not remember. Yeo Chin Choo (D.W.1) was, however, sure that it was in 1956 that he acquired the tenancy of the grounds though not of the outhouse until some years later when the rent was increased. This I accept because the occupation of the outhouse only 4 or 5 years later is confirmed by P.W.2 the plaintiffs' assistant manager. On the whole, D.W.1 made a better showing as a witness than P.W.1 and P.W.2 although I have advised myself that because of the natural desire he has to preserve his tenancy he may have a strong motive for twisting the facts to his own advantage. But similar considerations also apply to the plaintiffs who are no doubt anxious to be rid of his presence in their premises probably as he has been somewhat tardy in payment of rent and also because he has made alterations to the premises (*albeit* improvements) with a view to "digging himself in" for as long as possible.

(b) The managing partner of Singapore Hotel (P.W.1) seems to have had little or no time to devote to finding out the use to which the premises behind No. 2 Tanjong Katong Road which he had originally let, according to him, with a prohibition against its use as an office, were being put. His unsureness about the tenant's use of the premises which he never personally visited or supervised, save through underlings towards the end of 1966, makes it difficult for me to place any great reliance on his evidence about the terms of the original oral tenancy. He seemed to depend on his assistant manager, Wee Chong Seng, (P.W.2), for information about the manner in which the premises were being used and he took no active steps to find out till late 1966.

(c) P.W.2, on the other hand, was most unsure about the terms of agreement between P.W.1 and D.W.1 He took no part in them. He stated he merely collected rent. As for the use made by D.W.1 of the premises let to him, this witness seemed to know nothing at all about what was going on, save that he said that, about 4 or 5 years after the tenancy began, *i.e.* 1960 or 1961 the defendants were using the outhouse or garage as an office. This, I accept. I find it difficult however to place any great reliance on him either. He said that he did not even know that the outhouse was included in the tenancy. Why he kept quiet about its use from 1961 onwards has not been explained. He carries the case no further for the plaintiffs on the question of prohibited use but it seems to me that D.W.1 obtained the tenancy of the outhouse as well in 1960 or 1961 on his paying $20 more as rent because of this.

(d) P.W.3 was the plaintiffs' watchman. His evidence was to the effect that cars had never been parked in the outhouse or garage but he knew that the drivers employed by the defendants were sleeping in it even before renovations had been completed. He saw a desk and a telephone in it. He however saw the defendants' cars parked in the compound around it as had already been permitted by P.W.1, according to the latter's evidence, at the commencement of the tenancy. This is the only witness for the the plaintiffs who had close first-hand knowledge of the use to which the outhouse was put as he lived about 10 feet away from it. I find it difficult to believe that P.W.1 and P.W.2 could have had no knowledge of this use, if P.W.1 had objected in the first place to its use as an office and/or a resting place or imposed any prohibition on such use.

(e) The question for decision, on the facts, is whether the plaintiffs allowed the outhouse to be used only as a garage for parking the defendants' cars on the understanding that it was a condition of the tenancy that its use for other purposes of the defendants' hire-cars service such as providing night shift accommodation for drivers and its use

as an office was totally prohibited. It should be remembered that P.W.1 had consented to the use of a small portion at the front of his hotel as a place from which D.W.1 could conduct his hire-car business. I accept this evidence. Although his telephone is still there P.W.1 has now let that space out to a cosmetic business. In 1960 and 1961 D.W.1 occupied the outhouse as an office although he still asserted his right to use the front portion and did so till about 1964. P.W.2 knew very well that D.W.1 was "going over to the other side" *i.e.* to use the outhouse as an office since the hotel space could not be used conveniently for a 24-hour service. The conclusion is, to my mind, irresistable that P.W.1 and P.W.2, between them, permitted D.W.1 to run his business from the commencement of his tenancy as he liked, without objection, until 1966 and that the original tenancy terms, which were verbal, were so tenuous, if not uncertain, as to prohibition of use, as to lead D.W.1 to believe that he could use the outhouse for all purposes ancillary to his business. I do not accept the plaintiffs' version that the outhouse was only to be used as a garage. The evidence is very much the other way, i.e., that it was never used as a garage.

(f) I also find that it was only some 10 years after the original letting that P.W.1 suddenly realised that major renovations were in contemplation, or were in the course of being executed, and it was only then that he sent his underlings (P.W.2 and P.W.3) to investigate or to remonstrate with P.W.1.

(g) It follows therefore that, with regard to paragraph 3(c) of the statement of claim concerning use in breach of a condition of the tenancy prohibiting use as an office and/or a dwelling or resting place, I find no such breach because I am not satisfied that such a condition was imposed in the first instance. I find that the defendants had the implied permission of the plaintiffs to use the premises for any purposes connected with his business including, if necessary, their use as an office or a place in which drivers could rest.

(h) With regard to paragraph 3(b) as to the defendants' having committed a breach of the provisions of the Local Government Integration Ordinance, 1963 affecting the premises which the plaintiffs claim exposed them to a penalty, fine or forfeiture, I find that the defendants did, in fact, make building-alterations to the outhouse which originally had no walls on two of its four sides. At some stage during their tenancy plank walls were erected on the two open sides and it was only in 1966 that these two sides were converted into walls, partly plank and partly brick, with some doors and windows. The new structure bears little resemblance to the original outhouse.

(i) With regard to paragraph 3(a), a notice to quit dated 28th January, 1967 was served on the defendants on 30th January, 1967 in the following terms:—

"As solicitor for Singapore Hotel, I HEREBY GIVE YOU NOTICE and demand and require of you to quit and deliver up to them on the 28th day of February, 1967 (or at the expiration of the month of your tenancy which will expire next after the end of one calendar month from the service of this notice) the possession of the garage at the rear of No. 2 Tanjong Katong Road, Singapore, held by you of them as monthly tenants."

But previously on 30th December, 1966, the plaintiffs had demanded immediate payment of the arrears of rent due for the period 1st August, 1966 to 31st December, 1966. In response to this demand $660 was paid in respect of the period 1st August, 1966 to 31st October, 1966. As on the date of the service of the notice to quit, however, *i.e.* 30th January, 1966, they had not yet received the arrears of rent due for the months of November and December, 1966 but I find that the defendants tendered a cheque postdated to 31st January, 1967 on 25th January, 1967, which the plaintiffs refused to accept and returned to the defendants on 26th January, 1967.

I now turn to a consideration of the law applicable to the facts as found by me.

With regard to paragraph 3(a), I find on the authority of *Farquharson* v. *Pearl Assurance Co., Ltd.*[1] that the tender of a postdated cheque dated 31st January, 1967 did not amount to a tender in law at or before 30th January, 1967, the date of the service of the notice to quit. Even if the plaintiffs had not returned that cheque on 26th January, 1967, it would have been no more than a worthless piece of paper to them on 30th January, 1967 because it could not have been cashed until the following day, assuming of course that there were funds to meet it. I have therefore no difficulty in coming to the conclusion that the plaintiffs have succeeded in proving their case under section 15 (1) (a) of the Control of Rent Ordinance (Cap. 242) for recovery of possession. I will consider at a later stage whether it is reasonable that an order for possession should be made on this ground.

With regard to the other grounds set out in paragraph 3(b) and 3(c) of the statement of claim, no question of law arises with regard to paragraph (c) as I have already found on the facts that the defendants did not commit any breach of a condition of the tenancy prohibiting

the use of the premises in question as an office, etc. for the simple reason that I find that no such condition was imposed in the first instance.

The only other substantial ground is paragraph (b) regarding breach of section 52 of the Local Government Integration Ordinance, 1963 which the plaintiffs claim exposed them to a penalty, fine or forfeiture. Section 52(18)(a), however, provides that responsibility for erecting a building within the meaning of subsection (17) rests with the owner of the building if the person (not being the owner) who actually carried out such building operations is not known or cannot be found in Singapore. It is clear that the plaintiffs would be liable only if the defendants could not be found. It is also clear law that before the landlord can be said to be exposed to any penalty, fine or forfeiture, it must be shown that there was exposure to conviction and not merely prosecution. It is also clear law that there is no exposure to conviction unless facts exist which would support a conviction. (See *Hooi Chuk Kwong* v. *Lim Saw Choo* [2] and *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corporation Ltd.*[3]). On the facts adduced in evidence before me, I am unable to find that the plaintiffs have been exposed to conviction. There is not the slightest suggestion of even a prosecution of anybody hitherto in connection with alterations made to the outhouse which originally commenced in 1960 or 1961 when plank walls were erected. If the plaintiffs had reported the matter to the authorities, the defendants may well have been caught red-handed and brought to book if the alterations made were considered to contravene section 52 of the Ordinance. The plaintiffs as owners would have run the risk of being prosecuted for any unauthorised erections only if those responsible could not have been found. I cannot think of any reason why the plaintiffs should now complain that they are exposed to conviction especially when the defendants are still in occupation. Furthermore, I am not satisfied that facts have been proved before me which would support a conviction of the plaintiffs.

The only ground on which the plaintiffs succeed therefore is that set out in section 15(1)(a) of the Control of Rent Ordinance.

An order for recovery of possession can be made, once such a ground is proved, only if the court considers it reasonable that such an order should be made.

The history of the relationship between the parties since 1956 in relation to the tenancy not only of the outhouse and its grounds but also of that small space 9 feet x 5 feet in the front part of the hotel (which the defendants ceased to occupy in early January 1965 and which has since been let out to a cosmetic firm) as revealed by the evidence is such that I do not consider it reasonable to make an outright order for recovery of possession. On the one hand, the defendants have always been late in their payment of rent. On the other hand, the plaintiffs have tolerated this state of affairs for many years until late 1966 when the major alterations commenced. As I have said earlier, a report to the chief building surveyor could well have achieved the desired result and cleared the plaintiffs of any responsibility for these alterations. It is now claimed by the defendants that the plaintiffs acquiesced in the alterations at least through P.W.2. P.W.2 claimed to be only a collector of rent but it should be borne in mind that he was then assistant manager and I am inclined to the view that he knows far more about the tenancy than he has cared to tell the court. He left the employment of the plaintiffs in April 1968 which is the month in which the statement of claim was amended to include paragraph 3(c) alleging a breach of a condition of the tenancy with regard to the use of the outhouse as office premises and/or a dwelling-house. This, of course, fortifies me in the conclusion I have already reached earlier to the effect that there was never such a condition in the first place and that its addition in paragraph 3(c) is an after-thought. This brings me to a consideration of whether or not the plaintiffs acquiesced in the alterations as the defendants allege. In view of the opinion I have formed of P.W.2, I think it is more probable that they did through P.W.2 having particular regard to the fact that the outhouse had been allowed to be used as an office at least since 1961 when plank walls were constructed.

Having regard to all these circumstances, I propose to make an order for recovery of possession subject to the condition that it be suspended for as long as the defendants pay the monthly rent of $220 regularly within 7 days of the end of every month and provided the defendants pay all the outstanding rents from 1st March, 1967 till the end of August 1968 at the rate of $220 per month, *i.e.* $3,960 within 14 days hereof.

There will be judgment accordingly with costs to the plaintiffs.

Judgment accordingly.

Solicitors: *M. B. Brash; T. L. Lee & Co.*

SIM GUAN SOON & ANOR. v. KHOO TING HONG & ANOR.

[O.C.J. (Chua. J.) September 26, 1968]
[Singapore — Suit No. 1782 of 1967]

Negligence — Duty of care to trespassers — Contributory negligence — Admission of police report in civil proceedings.

In this case the plaintiffs claimed damages for the benefit of the estate of a deceased's loss of expectation